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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

DELTA STONE PRODUCTS,
Plaintiff,
v.
XPERTFREIGHT, US EXPRESS, LLC,
EMBASSY CARGO S.P.A. HARBOR
FREIGHT TRANSPORT CORP., RSA -
SUN INSURANCE OFFICE, LTD.,
SERAN SALAMON, an individual, RAFIK
NAZAROV, an individual, and DOES 1
through 10,
Defendants.

Case No.: 2:16-cv-00369-CW-EJF

**DEFENDANT/CROSS-DEFENDANT
HARBOR FREIGHT TRANSPORT
CORP.'S MOTION FOR LEAVE TO
FILE SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AS TO
PLAINTIFF'S CARMACK
AMENDMENT CLAIM BASED ON
NEWLY ACQUIRED EVIDENCE**

Judge Clark Waddoups
Magistrate Judge Evelyn J. Furse

Defendant/Cross-Defendant Harbor Freight Transport Corp. (“Harbor Freight”), by and through its attorneys, moves for leave to file the attached supplemental briefing (Exhibit A) based on newly acquired evidence after its pending Motion for Summary Judgment was filed and briefed (Doc. 102; Doc. 122). In support, Harbor Freight states as follows:

1 1. Defendant US Express, LLC (“US Express”) deposed Plaintiff Delta Stone’s
2 (“Plaintiff”) Rule 30(b)(6) representative, Aaron Hicken, on November 7, 2017. Mr.
3 Hicken, as Plaintiff’s corporate representative, bound Plaintiff by his testimony.

4 2. Specifically, Plaintiff expressly testified and admitted it had knowledge that
5 ***US Express and US Express alone*** caused the alleged damages to the Shipment upon
6 immediate arrival of the shipment—well before filing this lawsuit.

7 3. Mr. Hicken maintained throughout his deposition that Defendant US Express
8 caused the damages to the Shipment.

9 4. As such, Mr. Hicken’s testimony, as Plaintiff’s corporate representative,
10 establishes that Defendant US Express caused the alleged damage that forms the basis of
11 this lawsuit, that Plaintiff believed Defendant US Express alone caused the alleged damage,
12 and that Defendant US Express admitted that it caused the alleged damaged on numerous
13 occasions.

14 5. There never existed any good faith basis to name Harbor Freight as a
15 Defendant in this action.

16 6. As set forth above, US Express’ driver and corporate representatives
17 repeatedly admitted that it caused the alleged damage to the subject cargo.

18 7. After Plaintiff’s deposition, Harbor Freight sent correspondence to Plaintiff’s
19 counsel requesting immediate dismissal since Plaintiff’s own corporate representative
20 admitted that he had knowledge since the delivery of the Shipment that it was US Express
21 and US Express alone that caused the damage.

22 8. Despite this knowledge and testimony, Plaintiff continues to deny voluntary
23 dismissal of Harbor Freight from this action, prompting Harbor Freight to seek leave to file
24 that attached supplemental briefing and unnecessarily burden the Court.

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For the foregoing reasons, Harbor Freight respectfully requests that the Court grant Harbor Freight leave to file the attached supplemental briefing for consideration.

DATED this 1st day of December, 2017.

Respectfully Submitted,

By: s/ Robert W. Thompson
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2017, the foregoing
DEFENDANT/CROSS-DEFENDANT HARBOR FREIGHT TRANSPORT CORP.'S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S CARMACK
AMENDMENT CLAIM BASED ON NEWLY ACQUIRED EVIDENCE was filed
electronically with the Court through the CM/ECF system, which will provide electronic
notice to the following:

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